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ABSTRACT

This handbook for immigrant parents outlines the legal rights of immigrant children to educational services. All children in the United States have a right to attend school. Schools may require proof of residency and vaccination before enrollment, but a signed sworn statement attesting to the child's age may be substituted for a birth certificate. Some schools require immigrant children to be reviewed by an intake center before admission, but it is illegal for the information to be passed on to the Immigration and Naturalization Service (INS). No high school student should be automatically placed in a freshman class without assessment of his education[illegible] placement of a limited-English-speaking student in a class for the mentally and physically disabled is a very serious problem. Children may be entitled to the following special services: (1) special education programs; (2) gifted and talented programs; (3) migrant education programs; and (4) compensatory education programs. A school district must meet special language needs. Bilingual education programs are special programs to develop English language skills and include instruction in the student's native language. These programs usually afford the best opportunity to learn English. Schools also have an obligation to provide parents with information in a language they can understand. Parents have a right to a formal hearing with a lawyer if their child is suspended or expelled. Parents also have a right to inspect and review their child's education records. A list of legislation guaranteeing immigrant childrens' rights is appended. (FMW)

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A Handbook for Immigrant Parents

Protect the Educational Rights of Your Children

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HANDBOOK FOR IMMIGRANT PARENTS

INTRODUCTION

Public schools in the United States are probably very different from the schools in your homeland. One of the most important differences is that there are many detailed laws here that determine what these schools are required to do. *These laws are also intended to protect your rights and the rights of your children.* These laws were passed because discrimination against immigrants and minorities is not uncommon in this country. You and your children may face these problems. It is important that you *know what your rights are* in order to help you avoid these problems, and to deal with them when they occur.

In general, you and your children have two kinds of rights in U.S. public schools. You have the right not to be discriminated against because you are immigrants, or because of race, language, or disability. *Your child may also have rights to specific kinds of educational programs which the schools have to provide for free.*

The purpose of this booklet is to warn you about some common problems that immigrant children encounter **and** what the law says about these problems. To protect your child, you do not have to be a lawyer; you do not have to speak English; you do not have to be well educated. By knowing the law and asserting your rights, you are more likely to protect your child than if you remain silent. It is also important that you join with other parents to defend your rights. The more noise you make, the more attention you will get.

If you cannot get satisfaction on your own or with other parents, you should contact your local Legal Aid office or other community groups that provide services to immigrants. Most communities have programs of free legal services for low-income persons. META is available to help your local Legal Aid program. Have them contact us.

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YOUR CHILDREN HAVE THE RIGHT TO ATTEND SCHOOL

1. All children in the United States have the **right** to a free public school education in the school district in which they live*.

Immigrant children do **NOT** need a green card, visa, passport, alien registration number, social security number, nor **ANY OTHER** proof of citizenship or immigration status in order to register for school. You do not have to and should not check with INS before sending your child to school. It is illegal for a school to require you to do so.

2. In fact, all children are **required** to attend school in most states. Send your children to school—they have a **right** to attend! You have a **legal obligation** to send them.

3. Some states deny equal access to colleges or universities to undocumented students. In California, Arizona and New York, courts and policy makers have granted equal rights to students irrespective of immigration status. Other states that deny equal access may be acting unlawfully. Consult a lawyer.

*A small group of children who **have** a tourist or other non-immigrant visa may possibly be denied admission. You need not worry about this unless you **have** a visa.

DOCUMENTS THAT SCHOOL DISTRICTS MIGHT REQUEST

Birth Certificate

School districts may ask you for your child's birth certificate. If you do not have one, your child should not be denied admission. The only **legitimate** reason for this request is to determine your child's age. You should be allowed to do this by giving the school a signed sworn statement, if you have nothing else such as a baptismal certificate, etc.

Proof of Residency

A school district has a right to determine if you live in the district. Schools refer to this as "proof of residency." "Residency" has a different meaning under the immigration laws. You should not confuse the two terms. "Proof of residency" in the school district sense may require that documents such as utility bills or rent receipts be given to the school. Schools are concerned that only

students actually living within the district attend their schools. This has nothing to do with your immigration status in the United States.

Visa or Other Document from the INS

There are several programs funded by the U.S. government that are especially for immigrant students. To participate in these programs, schools may require that you prove you have refugee status or that your children were born outside the U.S. and the date of your arrival. None of these programs require that you or your children be individually identified as undocumented immigrants. A school district should be able to get needed information without recording undocumented status.

You have the right to refuse to give this kind of information to the schools. If you refuse, this should not affect your child's right to attend school, and should only mean that your child will not be able to participate in these federal programs. Two of these programs are the Transitional Program for Refugee Children and the Emergency Immigrant Education Program.

Immunization Records

The law in many states requires that before a child can be admitted to school, the child must be immunized against certain diseases. In order to enforce this law, schools may ask you about your child's medical history. However, there is absolutely no reason why schools should ask about your or your child's immigration status. If you are low income and need assistance in getting your child vaccinated you may want to consult community groups that help immigrants in your area. Generally, you should not have difficulty getting your child vaccinated regardless of your immigrant or financial status. However, if you are undocumented and low income and you are not able to obtain free or low cost vaccinations for your child, you should immediately contact a local community advocacy group in your area for assistance.

THE CHILD WHO DOES NOT LIVE WITH HIS OR HER PARENTS

Under the ordinary situation, there should be **no** barrier to a child entering school, as long as the **child** lives in the district. The one exception might be where the child is living in the district

with persons other than his or her parents for the **sole purpose** of attending a particular school. If a school district bars a child on this ground or seeks tuition, the school district has the duty to establish that the sole reason the child is in the district is to attend school. If they persist without evidence, you should get legal help.

THE IMMIGRANT INTAKE CENTER

More and more school districts are requiring immigrant students to go to an intake center before they can be admitted to school. There is controversy about whether or not this might be helpful. Intake centers have been set up to test the language skills of the child to determine placement, to check immigration papers to determine if a child is eligible for special federal programs, (**not** [we hope] for admission) and to review transcripts for proper placement in the school district.

It would be illegal [20 U.S.C. Section 1232 (g)] for a school district to pass any of the information taken from a student at the intake center on to the INS. School districts generally know this and we know of very few cases where districts have engaged in this type of illegal activity. You should not hold your child out of school for fear that a school might disclose information to the INS. If you hear or are told that the schools are reporting information to the INS, **let us know immediately**.

TRANSCRIPTS AND PLACEMENT

School districts use various means to determine where to place your child. One thing they look at, if available, is the student's transcript from his or her home country.

1. Your child **definitely** should **not** be disadvantaged if you do not have a transcript.
2. Some districts are able to evaluate transcripts from other countries to determine your child's level. Some claim they are not able to evaluate transcripts from other countries. All schools should make an attempt to do so. For those who do not, you might suggest that school officials contact the National Association For Foreign Student Affairs (NAFSA) [1860 19th St. N.W., Washington, D.C. 20009] for an appropriate referral.
3. While it is difficult to establish strict rules for grade placement, there are several common acts that schools should **not** practice. They include:
   a) Automatic placement of a high school student in a class for freshmen without any evaluation of his or her educational background. If transcripts are not available, alternative ways of evaluating the student's knowledge should be undertaken.
   b) Misplacement of a student in a class for the mentally and physically disabled can happen where a non-English speaking child is given an English language assessment or where there is cultural bias. This is a very serious problem and is discussed further in this handbook.

YOUR CHILD MAY BE ENTITLED TO SPECIAL SERVICES

"Special Education" Programs

If your child is determined to be mentally or physically disabled, schools are required by law to provide special help for that disability. This type of program is commonly referred to as "special education."

It is important that only those children who are in need of special education receive it. If your child is assigned to a class or program for the mentally disabled, you should be suspicious—especially if your child does not seem disabled to you. Categorizing children whose English is incomplete or who have a different culture as retarded or mentally disabled has been a common problem in the United States. There are laws that require testing to take language and culture into consideration.

It is common in the United States for children who do not speak English and who are disabled to be placed in a bilingual program without any additional services for the disability. This is also illegal.

"Gifted and Talented" Programs

If your child has intelligence that is substantially greater than that of other children, in many states he or she is entitled to participate in a special program. This program is commonly referred to as a program for "gifted and talented" students.

Many schools do not attempt to determine if students whose English is limited are "gifted." Also, many schools determine if a student is gifted based on an English language test that does not reflect the true skills of the student. If a district has a program for the gifted and does not properly assess your child, that district is violating the law.

"Migrant Education" Programs

If you have moved from one school district to another to find work in agriculture or to find work fishing within the last five years, your child may be eligible for special services under a school's "migrant education" program. By law, school districts, including those located in large urban areas, are obligated to provide special services to "migrant" children when they receive additional funding from the government to provide these services.

These special services should include such things as extra academic help, counseling, a summer school program and assistance in a child's own language. Under the law, there is also a requirement that parents be actively involved developing and evaluating a school's "migrant education" program. There is absolutely no reason why a school should ask about your legal status in the United States to determine whether or not your child is eligible for special services under a migrant education program although a district may, understandably, ask about your or your child's work history.

"Compensatory Education" Programs

School districts in all states receive funding from the federal government to implement programs that provide additional help to "low-achieving" students in general. These programs are usually called "chapter one" or "compensatory education" programs. "Compensatory education" programs have traditionally provided extra help in reading and math for elementary school children whose test scores show that they are not performing in school at or near the grade level of other children their age. Again, your children's immigration status should in no way determine their right to participate in this program.

You should be aware that some school districts deny "compensatory education" services to children who do not speak or are limited in their ability to speak English. This practice clearly violates the law. When a school sets out to determine if a child who is limited in his or her ability to speak English is eligible for compensatory education services, it must evaluate other factors **not** related to a child's English language needs. Having English language needs and being "low-achieving" in school are two separate issues. They must be evaluated and addressed separately.

Under the law, schools are required to take specific steps to ensure that parents, including those who do not speak English, are actively involved in and informed about a school's "compensatory education" programs.

A SCHOOL DISTRICT MUST MEET YOUR CHILD'S LANGUAGE NEEDS

A school district is required by law to develop a special program for children who need English language help. **At a minimum** that program (a) must provide special help through a trained teacher

to assist your child to learn English and (b) must provide special assistance to help your child learn what other children are learning even if he or she does not speak sufficient English. This help must continue until your child no longer has a barrier due to his or her English language skills.

The above is true **wherever** you are. Some states require districts to provide more help to a child who does not speak English. This may include having a teacher who speaks your child's language. This is called a "bilingual program."

WHAT IS A "BILINGUAL" PROGRAM?

A properly implemented bilingual program is one in which your child is provided a special program to develop his or her English skills so that he or she can compete fully with native English speakers. It also includes instruction by a trained teacher in your child's language while the child is learning English.

The value of a properly implemented bilingual program is that your child is able to keep up with other class work while learning English.

Another value of a bilingual program is that your child learns English. There is good reason to believe that if your child develops reading skills in his or her native language first, he or she will actually learn English better in the long run.

WHAT SHOULD YOU DO IF YOU HAVE A CHOICE BETWEEN A "BILINGUAL" PROGRAM AND SOMETHING ELSE?

Sometimes you may have a choice between a bilingual program and something else—usually a program that focuses solely on learning English. The "something else" usually does not provide much, if any, help in your child's language.

No one, of course, should tell you what to do in this situation. However, you should know that sometimes school officials try to convince parents to remove their child from a bilingual program. They will say that a child will learn English better in the other program. Unless the bilingual program is not working correctly, this should not be the case. You should investigate what type of programs your school offers. You may want to talk to other parents about this. Remember that a non-bilingual program usually means that your child will receive little or no help in his or her own language.

"I CANNOT UNDERSTAND THE NOTICES MY CHILD BRINGS HOME FROM SCHOOL"

A school district has an obligation, wherever practicable, to provide you with basic information in a language you can understand. If the language is common in the district, important notices should be translated. If your language is not common in the district, the district should make provisions for a translation. If you do not understand notices, you or your child should ask the school for a person to assist you with translation.

YOUR CHILD MAY HAVE CERTAIN RIGHTS IF HE OR SHE IS DISCIPLINED BY THE SCHOOL

The main forms of discipline in U.S. schools are suspension and expulsion. Suspension removes a student from school for a relatively short time—usually ten days or less. Expulsion usually

removes a student until the end of the semester or year.

These are serious penalties that sometimes are issued unfairly or discriminatorily. You should not automatically assume your child is guilty of the charge.

On a suspension, you and your child have a right to an informal hearing. On an expulsion, you have a right to a formal hearing with a lawyer who can often be found at a Legal Aid office. You should ask for these hearings to assure that your child is not being treated unfairly.

YOU HAVE A RIGHT TO INFORMATION

You have a right under federal law to inspect and review the education records of your child. They must be given to you no later than 45 days after you request them. If you find that the records are inaccurate or misleading, the district must give you an opportunity to challenge the information as well as to insert your view into the record.

This right is important. What goes into a record follows your child. If one teacher makes an error, it may hurt your child's school history, and, consequently, his or her future.

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RIGHT TO CONFIDENTIALITY OF RECORDS

In general, your child's education records, which you as a parent have a right to see, must not be distributed to anyone outside of the schools without your consent. This includes police officers or immigration officers (unless they get a court order, known as a subpoena—which you can challenge).

DISCRIMINATION ON THE BASIS OF RACE OR BECAUSE YOU COME FROM ANOTHER COUNTRY

U.S. society has had a long history of discriminating against newcomers and persons who are not the same color as the majority. This has been reflected in the schools.

You should make sure that your children receive equal access to all the programs a school offers. Your child should never be segregated on the basis of his or her race or origin (although limited separation on a legitimate basis, such as language needs, is permissible).

a) Bussing: In some communities, children are taken by bus to schools outside of their neighborhood. While this may occur for several reasons, including overcrowding, frequently bussing is done to assure that children of different races attend school together. It often is the result of a court finding that the school system intentionally discriminated against black or latino children by separating them. Such bussing should not result in denying your children programs they need, such as programs to address language needs. There should also be programs that assist you to meet with teachers at the distant school.

WHERE TO TURN FOR HELP

There are several places where you can obtain help with the problems identified in this booklet. In most communities, there is a legal aid or legal services office which is designed to provide free legal assistance for low income persons. You should be able to find it in the telephone book (it will usually be listed as "(City or County) Legal Aid" or "Legal Services of (City or County)." If you cannot find it this way, contact the Bar Association of your area in the yellow pages of the telephone book.

M.E.T.A., Multicultural Education, Training and Advocacy, Inc., which has produced this booklet, can be contacted directly, at the two addresses listed on the cover. It is preferable, however, that you first speak to a local legal aid office and inform them of our availability.

The Mexican American Legal Defense and Education Fund handles some education discrimination cases on behalf of Latino children. The telephone number for their national office in Los Angeles is (213) 629-2512.

Others who may be able to provide advice, assistance or referral include the following:

ARIZONA
- Arizona Center for Immigration (602) 253-3657 (Phoenix)
- Maricopa Organizing Project (602) 268-6099

CALIFORNIA
- California Rural Legal Assistance Foundation (800) 553-4503
- Coalition for Immigrant and Refugee Rights and Services (415) 554-2444 (San Francisco)

FLORIDA
- Miami Dade Legal Services (305) 576-0080
- Florida Rural Legal Services (813) 657-3681 (Immokalee)

ILLINOIS
- Travelers and Immigrants Aid (312) 435-4500 (Chicago)

NEW YORK
- ACLU Immigrant Rights Project (212) 944-9800

TEXAS
- Catholic Charities (214) 528-4870 (Dallas)
- Texas Rural Legal Aid, Inc. (800) 292-3018

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AUTHORITIES

1. Right of all children to attend school:
   a) **Plyler v. Doe**, 457 U.S. 202 (1982)
2. Limitations on residency inquiries:
   a) **Plyler v. Doe**, 457 U.S. 202 (1982)
   b) **Horton v. Marshall Public Schools**, 769 F.2d 1323 (8th Cir. 1985)
   c) **Byrd v. Livingston School District**, 674 FSupp. 225 (E.D. Texas 1987)
   d) See also **Martínez v. Bynum**, 461 U.S. 321 (1983) upholding a legitimate residency request.
3. Right to see records and to keep records confidential:
   a) 20 U.S.C. 1232 (g) (also known as the Family Educational Rights and Privacy Act—FERPA—or Buckley Amendment) **et seq.**
   b) See also **Maria P. v. Riles** regarding immigration records (on file at M.E.T.A.).
4. Right to appropriate special education testing and programs:
   a) 20 U.S.C. 1401 **et seq.** (Education of All Handicapped Children's Act)
   b) **Larry P. v. Riles**, 793 F.2d 969 (9th Cir. 1986)
   c) **Donovan v. Riles**, (consent decree) (on file at M.E.T.A.)
   d) **José P. v. Ambach**, 3 EHLR 551 (E.D.N.Y. 1979)
5. Right to programming responsive to language needs:
   a) 20 U.S.C. 1703 (f) (Equal Educational Opportunity Act of 1974)
   b) **Lau v. Nichols**, 414 U.S. 563 (1974)
   c) **Castañeda v. Pickard**, 648 F.2d 989 (5th Cir. 1981)
   d) **Keyes v. School District No. 1**, 576 FSupp. 1503 (D. Col. 1983)
6. Right to hearings in discipline situations:
   a) **Goss v. López**, 419 U.S. 565 (1975)
7. Right to understandable information:
   a) "May 25, 1970 Memorandum"; 35 Fed Register 11595
8. General right to be free of discrimination:
   a) The "Equal Protection Clause" (14th Amendment) of the U.S. Constitution
   b) 42 U.S.C. 2000(d) (Title VI of the Civil Rights Act of 1964).
9. Special programs:
   a) Emergency Immigrant Education Act, 20 U.S.C. 3121, 34 CFR 581 **et seq.**
   b) Transitional Program for Refugee Children, 8 U.S.C. 1522(d), 34 CFR 538 **et seq.**
   c) Federal Chapter 1 (Compensatory Education Program) 20 U.S.C. 2701 **et seq.**
   d) Federal Chapter 1 (Programs for Migratory Children) 20 U.S.C. 2781-2783
   e) Gifted and Talented Children 20 U.S.C. 3061-3068

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AUTORIDADES

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